



8 OCT 1974

Honorable Thomas E. Kauper  
Assistant Attorney General  
Antitrust Division  
Department of Justice  
Washington, D. C. 20530

Re: United States v International Business Machines Corporation,  
69 Civ. 200 (S. D. N. Y.)

Dear Mr. Kauper:

This is to express my deep concern that in connection with the discovery activities being conducted in the referent case, certain classified Agency materials have been released by the Department of Commerce to representatives of the International Business Machines Corporation (IBM) without this Agency's consent.

The documents to which I refer are:



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It is my understanding that these documents were released by the Department of Commerce despite a member of my staff specifically asking both the Department of Commerce and the Antitrust Division that such action not be taken without Agency approval.

The reasons for my concern over this development are several. It constitutes a violation of The Third Agency Rule which proscribes one department from disseminating classified material originating in another without the consent of the originating department (3A CFR 1972 Comp. at page 237), and a possible infringement of the statutory responsibility to protect intelligence sources and methods from unauthorized disclosure as vested in the Director of Central Intelligence by the National Security Act of 1947, as amended, (50 U.S.C.A. 403(d)(3)). In addition, it is contrary to the previous understanding between our respective agencies and IBM regarding the matter of IBM's inspection of classified Agency materials.

Under the terms of that understanding, classified Agency materials were inspected by IBM only under Agency supervision, and while IBM was permitted to examine all relevant materials, copies of the materials it desired were made available to it only after sensitive intelligence information had been excised from the documents. I consider it extremely unfortunate that no attempt was made by the Department of Justice to impose the same restrictions on inspection of Agency documents in the possession of the Department of Commerce, as were agreed to among the Agency, IBM, and the Department of Justice for the previous inspections of Agency documents in the possession of the Agency.

It is for the above reasons that I find it necessary to bring this matter to your personal attention. While I recognize that in releasing these documents the Government was seeking to comply with a court order, the fact remains that the release was effected in a manner contrary to regulations of the Executive Branch. Should future IBM discovery requirements call for the release of classified Agency material, it would be appreciated if you would ensure that the release occurs only in accordance with the conditions previously agreed upon.

Sincerely,

s/ John S. Warner

JOHN S. WARNER

General Counsel

COORDINATION:

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[Redacted Signature Box]

Edward W. Proctor  
Deputy Director  
for  
Intelligence

19 SEP 1974

Date

Carl E. Mickett  
Deputy Director  
for  
Science & Technology

Date

/s/John F. Blake

John F. Blake  
Deputy Director  
for  
Administration

26 SEP 1974

Date

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[Redacted Signature Box]

(17 September 1974)

8 October 1974

Bernard V. Parrette, Esq.  
Deputy General Counsel  
Department of Commerce  
Washington, D.C. 20230

Dear Mr. Parrette:

Re: United States v. International Business Machines Corporation,  
69 Civ. 200 (S.D.N.Y.)

This is in regard to your letter of August 26, which enclosed a list of 26 classified Agency documents that the Department of Commerce has disclosed to International Business Machines Corporation (IBM).

In my letter to Mr. Bakke, dated 8 October 1974, I have previously expressed my concern that this Agency's classified materials should have been disseminated to IBM without prior Agency consent. The incident to which I refer involved those documents on your list numbered 23 through 26. In my opinion, this latest unilateral disclosure involving documents numbered 1 through 22 is likewise a violation of The Third Agency Rule. While we stand ready to assist the Department of Commerce in complying with orders of the Court, I ask your cooperation in ensuring that our classified materials are disseminated only in accordance with Executive Branch procedures.

With specific reference to the first 22 documents listed, this Agency consents to the Department of Commerce making copies available to representatives of IBM. It should be expressly understood, however, that these documents may be released only to personnel possessing the requisite security clearances, and they must be handled in accordance with the Protective Order as issued by the Court in the referent case.

Sincerely,

[Redacted Signature]

JOHN S. WARNER  
General Counsel

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cc: The Honorable Thomas E. Kauper  
Assistant Attorney General  
Antitrust Division  
Department of Justice

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Original - Addressee

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- 1 - DDA
- 1 - AGC/OL
- 1 - OGC